

**PROCEEDINGS BEFORE THE
WASHINGTON STATE
BOARD OF ACCOUNTANCY**

In the matter of the Certified Public
Accountant (CPA) Certificate and/or
License(s) to practice as a CPA of:

David Richard Dance, CPA,

Respondent.

NO. ACB-1360

EMERGENCY TEMPORARY
CEASE AND DESIST ORDER

This matter came before the Washington State Board of Accountancy ("Board") for an Emergency Temporary Cease and Desist Order pursuant to RCW 34.05.479. The Board, having reviewed the Statement of Charges and Declaration of its Executive Director, Richard C. Sweeney, and documents attached thereto, hereby enters the following:

I. FINDINGS OF FACT

- 1.1 At all times material hereto, David Richard Dance, the Respondent herein, held a Certified Public Accountant (CPA) certificate and individual license (No. 05268) to practice as a CPA in the state of Washington. His CPA license expires on June 30, 2013.
- 1.2 Respondent's CPA license provides him with unique qualifications to operate a business as an "exchange facilitator" who facilitates exchanges of like-kind property under Internal Revenue Code (IRC) Section 1031 and RCW 19.310.090(1). At all times material hereto, the Respondent operated "1031 ECI LLC" a Washington State limited liability company located in Bellevue, Washington doing business as "1031 Exchange Coordinators" ("ECI"). The Respondent is the president and registered agent for ECI. ECI was formed March 1, 2005, and is registered with the

Washington Secretary of State under Unified Business Identifier (UBI) number 602-477-180 through March 31, 2013.

- 1.3 In December 2010, Howard and Marilyn Asmussen ("Asmussen") entered into a real estate purchase and sale agreement for the sale of certain real property located in Douglas County, Washington. As part of the transaction, Asmussen sought to sell the Douglas County property and purchase other properties as part of a tax-deferred exchange under Internal Revenue Code Section 1031 Like-Kind Exchanges ("IRC§1031")
- 1.4 The Asmussens retained the services of the Respondent to act as an exchange facilitator as defined in RCW 19.310.010(2) to facilitate their IRC 1031 Like-Kind Exchange of property. The Asmussens were "clients" of Respondent as defined under the laws governing both Exchange Facilitators, RCW 19.310.010(1), and Accountancy, WAC 4-30-010(10).
- 1.5 On or about March 3, 2011, the Respondent entered into a 1031 Exchange Coordinator Facilitator Agreement ("Agreement") with Asmussen. Pursuant to the Agreement, the Respondent agreed to act as an agent and fiduciary to Asmussen for the purpose of completing the necessary exchange of like-kind property under IRC§1031.
- 1.6 On March 16, 2011, the Respondent advised Asmussen that the official recording of the transfer of the relinquished Douglas County, Washington property was March 15, 2011. On March 16, 2011, the sale proceeds totaling \$2,079,272.44 were transferred into ECI's qualified trust account at a Bancorp Bank in Wilmington, Delaware.
- 1.7 The Respondent identified replacement properties located in Washington, Utah and Arizona that would qualify for Asmussen as an exchange under IRC§1031. On April 29, 2011, Asmussen indicated his intent to purchase three of the seven replacement properties identified by the

Respondent. Asmussen rejected four of the replacement properties the Respondent identified and suggested.

- 1.8 In March 2011 and May 2011, the Respondent acquired, closed, and transferred replacement properties that Asmussen had previously identified. The Respondent held the remaining balance of \$836,906.12 of Asmussen's exchange proceeds.
- 1.9 At some point thereafter, the Respondent removed Asmussen's \$836,906.12 remaining exchange proceeds from ECI's qualified trust account at the Bancorp Bank in Wilmington, Delaware and invested or deposited the proceeds into various accounts. The Respondent did not obtain permission or provide Asmussen with written notification as to how the exchange proceeds had been invested or deposited.
- 1.10 A referral fee of ten percent (10%) was associated with the Respondent's unauthorized investment or deposit of some portion of Asmussen's remaining exchange proceeds with Key Title and Escrow, a Virginia title company. The Respondent did not disclose the arrangement in writing to Asmussen in advance, disclose either the basis or the method of calculating the referral fee, specify the Respondent's role as Asmussen's advisor, or obtain Asmussen's consent to the fee arrangement in writing. The Facilitator Agreement, Section 7, states that the fee for facilitator services is \$1000 for the first closing as well as three hours of consulting services, \$250 for each closing thereafter and \$250 per hour for additional consulting services. The Agreement does not mention an additional referral fee.
- 1.11 On or about June 14, 2011, Asmussen advised the Respondent that he did not want to make anymore 1031 like-kind exchange purchases and made a demand for the balance of the funds held by ECI, totaling \$836,906.12 plus interest. On June 15, 2011, the Respondent advised Asmussen that under the IRS regulations the excess funds could not be returned to Asmussen until the end of

the exchange period. The Respondent advised Asmussen that the funds would be available to him on September 12, 2011.

- 1.12 On September 12, 2011, Asmussen personally met with the Respondent at ECI's office in Bellevue, Washington in order to obtain the balance of the funds held by the Respondent. The Respondent advised Asmussen that the funds were not available and refused to disburse the funds to Asmussen. Respondent never returned Asmussen's \$836,906.12 exchange proceeds.
- 1.13 The Respondent maintained that an "imposter" falsified and altered wire instruction to Key Title and Escrow such that the funds were routed to an incorrect account. The Respondent also represented to Asmussen that the funds were being used as part of a loan transaction in Las Vegas, Nevada, which was set to close during the period September 19 through September 29, 2011, and Asmussen's funds were being held by a lender in Las Vegas, Nevada, as a prequalified deposit with other funds, and if loan closing occurred as planned, all of the funds would be returned, plus "reimbursements." Neither the funds nor the reimbursements were ever provided to the Asmussens.
- 1.14 The Board finds that the foregoing actions of the Respondent create an immediate danger to the public safety and welfare requiring the issuance of an Emergency Temporary Order to Cease and Desist from the practice of Certified Public Accounting in the state of Washington.

II. CONCLUSIONS OF LAW

The Board has jurisdiction over the Respondent and the subject matter of this proceeding under RCW 18.04.295. Respondent's acts and omissions described in the Findings of Fact contained in Paragraphs 1.1 through 1.14 constitute cause for Accountancy Board discipline under RCW 18.04.295 and WAC 4-30-142 as more specifically set out in the following Conclusions of Law:

- 2.1 The removal of trust funds from the Respondent's qualified trust account as described in Paragraph 1.9 constitutes evidence of a violation of RCW 19.310.040 which is prima facie evidence of intentional fraud and a class B felony under RCW 19.310.120; and grounds for discipline under RCW 18.04.295(2) and (4), and WAC 4-30-142(8).
- 2.2 The removal of trust funds from the Respondent's qualified trust account as described in Paragraph 1.9 without providing written notice constitutes evidence of violations of RCW 19.310.110 (2) and is grounds for discipline under WAC 4-30-142(5)(e).
- 2.3 The failure to keep the Asmussens' \$836,906.12 exchange proceeds in a separately identified account exclusively for the Asmussens as described in paragraph 1.12 constitutes evidence of violations of RCW 19.310.110(1)(a), RCW 19.310.100(7) and is a breach of fiduciary duty under WAC 4-30-142(5)(h).
- 2.4 The failure of Respondent to return Asumussen's funds as described in paragraph 1.12 and 1.13 constitutes evidence of violations of RCW 19.310.100(9) and (10) and WAC 4-30-040; and is grounds for discipline under RCW 18.04.295(2) and (4).
- 2.5 The acceptance of a 10% referral fee as described in paragraph 1.10 constitutes cause for discipline under RCW 18.04.295(4) for violation of WAC 4-30-044 that requires CPAs expecting to receive a referral fee to disclose that fact to any person to whom the CPAs refer a product or service to which the referral fee relates.
- 2.6 Respondent's acts in paragraphs 1.1 through 1.13 constitute evidence of violations of WAC 4-30-048 that requires CPAs to exercise due care and professional judgment in order to comply with the rules, regulations, and professional standards promulgated by the appropriate bodies for each service undertaken including the Professional Code of Conduct issued by the AICPA; and WAC 4-30-052 that prohibits CPAs from committing acts reflecting adversely on

their fitness to represent themselves as CPAs. WAC 4-30-142 identifies dishonesty, fraud, or negligence while representing oneself as a CPA and violation of one or more of the rules of professional conduct as bases for the Board to impose discipline.

- 2.7 These violations constitute grounds for sanctions pursuant to RCW 18.04.295 and RCW 34.05.479 including but not limited to the denial, revocation, suspension, or refusal to renew or reinstate the Respondent's certified public accountant certificate and/or any license of the Respondent, the imposition of a fine plus the Board's investigative and legal costs, and imposition of full restitution to injured parties.
- 2.8 The Board finds that the foregoing actions of the Respondent create an immediate danger to the public safety and welfare requiring the issuance of an Emergency Temporary Order to Cease and Desist from the practice of Certified Public Accounting in the state of Washington.

III. TEMPORARY CEASE AND DESIST ORDER

Based on the Findings of Fact and Conclusions of Law, the Board enters the following ORDER:

RESPONDENT SHALL IMMEDIATELY CEASE AND DESIST from the following, until the Board modifies or vacates this ORDER.

- 3.1 holding himself out to the public or assuming or using the designation "certified public accountant" or "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that he is a certified public accountant or CPA,
- 3.2 from assuming or using along or in connection with his name, or any other name, the title or designation "certified accountant," "chartered accountant," "licensed accountant," "licensed public accountant," "public accountant," or any other title or designation likely to be confused

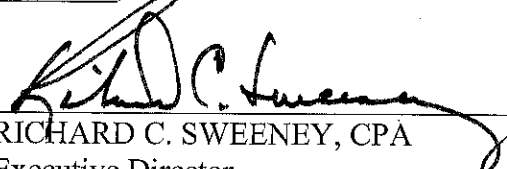
with "certified public accountant" or any of the abbreviations "CA," "LA," "LPA," or "PA," or similar abbreviations likely to be confused with "CPA,"

- 3.3 from signing, affixing, or associating his name or any trade or assumed name used by him in his business to any report designated as an "audit," "review," or "compilation,"
- 3.4 from holding himself out to the public as an "auditor" with or without any other description or designation by use of such word on any sign, card, letterhead, or in any advertisement or directory, and
- 3.5 from destroying, secreting, or otherwise tampering with any records he owns or controls which relate to the subject matter of the Statement of Charges herein.

IV. FAILURE TO COMPLY WITH THIS ORDER

YOU ARE FURTHER NOTIFIED that the failure of any person or persons to comply with this Emergency Temporary Cease and Desist Order may subject each person or persons to those penalties, actions, and proceedings authorized by RCW 34.05.279 for enforcement purposes.

DATED this 21st day of MARCH, 2013.


RICHARD C. SWEENEY, CPA
Executive Director
Washington State Board of Accountancy

This Order takes effect immediately upon being served. This Order was served on you the day it was deposited in the U.S. mail. RCW 34.05.010(19).

This emergency temporary cease and desist order shall remain in effect until further order of the Board. If you do not request a hearing within twenty (20) days pursuant to the attached Notice of Opportunity to Defend you will be in default and the Board may enter a permanent cease and desist order, which may include a civil fine.

This document was mailed to the following people:

1. State of Washington Secretary of State
2. 1031 Exchange Coordinators
3. David Richard Dance